IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B. Civil Sales Tax Rev. No. 167/02
S.B. Civil Sales Tax Rev. No. 168/02

under Sec. 86 of the Rajasthan Sales Tax Act 1994. against the order dated 03.10.2001 passed by the Rajasthan Tax Board, Ajmer.

Date of order : 03.01.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. Dinesh Mehta for the petitioner.
Mr. Sangeet Lodha for the respondents.

BY THE COURT

These two revision petitions are having common question of law and have come up because of the reason that two orders have been passed by the Assessing Authority under RST and CST Act.

So far as the petitioners' eligibility for tax exemption under Notification S. No. 595 and S. No. 596 dated 25.1.1986 is concerned, there is no dispute. By said notifications, the State Govt. has granted

exemption from payment of tax on sale of electronic items manufactured by the electronic Industrial Units. The requirement for tax exemption benefit is that the Industrial Units should have commenced their commercial production. The exemption is for the period of five years from the date of commercial production manufactured by the Electronic Industrial Unit within the State of Rajasthan.

The dispute is with respect to the actual date of commercial production of the goods by the assessee petitioner. According to the assessee petitioner, he commenced commercial production from its industrial units from 19.4.1988 therefore, the petitioner assessee is entitled to tax exemption benefit from 14.9.1988 to 14.9.193. The contention of revenue is that the petitioner started commercial production from 31.3.1988 therefore, the petitioner is entitled to tax exemption benefit up to 31.3.1993 only. The assessing Authority by impugned order dated 18.9.1995 in both the proceedings one under the RST Act and another under the CST Act, on the basis of alleged admission of the petitioner assessee made in application submitted for getting permanent registration of petitioner's unit from the State Industry Department, held that the petitioner started commercial production from 31.3.1988. The said decision was upheld by the Dy. Commissioner (Appeals) by order dated 28.01.1987 in both the cases.

The assessee preferred appeals against both the orders of the Dy. Commissioner (Appeals) which were dismissed by the Tax Board vide common judgment dated 03.10.2001 hence these two revisions are filed by the assessee petitioner.

According to the learned counsel for the petitioner, the petitioner served with a notice annexure/5 dated 28.3.1995 wherein it has been stated that in view of the fact mentioned in the application for permanent registration of petitioners' industry containing the fact that petitioners' unit started production from 31.3.1988 the petitioner is entitled to exemption benefit up to 31.3.1993 only. The petitioner gave detailed reply, copy of which has been placed on record by the petitioner alongwith other replies submitted by the petitioner time to time. The petitioner also placed on record a communication sent to the assessee in continuation to petitioner's reply dated 17.4.1995 and 29.4.1995 alongwith eight documents to show that the petitioners' unit started commercial production not before the month of Sept. 1988. It is submitted that all those documents were not considered by the Assessing Authority and the Dy. Commissioner (Appeals) and thereby did not apply mind to those documents merely on the basis of the alleged admission of the petitioner which alleged to has been taken from petitioner's application submitted for obtaining

registration of petitioner's Industrial Unit. Learned counsel for the petitioner vehemently submitted that before start of commercial production, the units are required to take trial production also and such production cannot be termed to be commercial production of the goods. In Notification dated 25.1.1986 the word `Commercial' has been used before the word 'production' and that has not been used superficially or without any purpose. It is submitted that the petitioner placed on record the trustworthy documentary evidence which are copy of first price list, letter dated 5.9.1988 submitted to Superintendent Central Excise Range, Udaipur and TR6, challan dated 12.9.1988 which is deposited in Central Excise Office, copy of letter addressed to Chief Account Officer, Central Excise Collector, Jaipur dated 29.4.1988 regarding application for PLA NO., copy of the quarterly return dated 25.10.1988 and Sept., 1988 submitted to Central Excise Office, Udaipur, copy of OTR-12, monthly return submitted to Central Excise Office Range, Udaipur. In addition to above the petitioner submitted copy of page 13 of the ledger showing the receipt of goods imported which is raw material, copy of the ledger page NO. 47 showing the labour payment and copy of the first page to appendix-B.

Learned counsel for the appellant submitted that it is true that the petitioner mentioned date 31.3.1988 as date of production of the goods by the petitioner unit for getting permanent registration of petitioner's unit as small scale industry but that was not “commercial” production.

Learned counsel for the non petitioner vehemently submitted that in fact the first date of sale cannot be treated to be date of commercial production of Unit. The word 'commercial production' in fact is the word denoting the `production' only because of simple reason that if a unit starts production and starts sale of the product later-on then it cannot be said that the unit started commercial production on the date of sale and not when the production started by the Industrial Unit. It is also submitted that in case the goods are manufactured by the industrial unit and it finds no buyer and the goods are not sold then that will not mean that the unit has not started commercial production of the goods from the date when it started production because of the mere reason that it could not sale the goods. It is also submitted by the learned counsel for the non petitioner that the Assessing Authority, the Appellate Authority and the tax Board concurrently held that the petitioner started commercial production from 31.3.1988 and that finding is based on documentary

evidence and that too based on admission of the petitioner himself. Learned counsel for the non petitioner also submitted that statement of partner of the petitioner unit was recorded on 01.2.1988 and thereafter the petitioner unit submitted application for obtaining permanent registration of the industry with specific admission that the petitioner started production from 31.3.1988 therefore, there is no illegality in the order impugned.

I considered the submissions of the learned counsel for the parties. First of all it may be clarified that correct notification is S. No. 595 and S.No. 596 dated 25.3.1988 and for which both learned counsel submits that copy of the notification produced by the petitioner alongwith revision is not applicable. The fact taken on record to correct the record as there is no dispute with respect to the petitioners' eligibility for the benefit under the Notification S. NO. 595 and 596 and there is no dispute with respect to language which is required to be interpreted for the purpose of deciding these revision and that is whether the petitioner started commercial production form 31.3.1988 or from 14.9.1988. This is also required to be decided on the basis of material available on record.

It appears from the order passed by the assessing authority,

Appellate Authority as well as the Tax Board that reliance was placed upon the petitioners' admission made in the application submitted for permanent registration of their unit from the industries Department wherein it is mentioned that petitioner started production from 31.3.1988. So far as production is concerned, that may be for many purposes like testing and trial and to judge the quality etc. Unit may produce products commercially fit which depends upon several facts. A unit may start production but product may of such standard that it may not have any commercial value. Sometimes a long time may be taken by the Unit for producing their product fit for commercial transaction. obviously this must be reason for using the word 'commercial production' in the Notification S.No. 595 and 596. Therefore, the matter should have been enquired at what time the petitioner's unit started commercial production of the goods. The date 31.3.1988 which is according to the petitioner is the date of start production of goods from the petitioner unit but not date of start of commercial production of the goods. It appears from the order passed by all the authorities and the Tax Board that they have not properly considered documents paced by the petitioner alongwith its reply. It appears that the assessing Authority, Appellate Authority and the Tax Board even did not carefully considered that RST and CST registration certificate were issued to the petitioner on 25.8.1988.

The documents which are relied upon by the petitioner and which are available on the record of the Revenue are mentioned by the petitioner in his supplementary communication i.e. in continuation to the reply filed before the Revenue dated 17.4.1995 and 29.4.1995. By these documents, it appears that the petitioner not only submitted those documents which were relevant and were submitted before the Central Excise Department and also placed on record the copy of relevant pages of the ledge showing the receipt of raw material (Imported Goods) and coy of first page of appendix-B. The Industrial Unit for obtaining permanent registration is required to take steps to establish unit as provided in clause 5.5.3 of the guidelines issued for grant of permanent registration of industrial units. From the above, condition, it appears that unit is entitled to obtain permanent registration if unit has built its factory building and installed machinery and testing equipments and obtained the power connection. For obtaining permanent registration, it appears that commercial production is not condition precedent. Therefore, without corroborating evidence, the fact mentioned in the petitioners' application for permanent registration of its Industrial Unit alone cannot be sufficient to discard the documents which have been submitted by the petitioner before the Assessing Authority. All the three authorities have not carefully appreciated this aspect of the

matter and failed to compare between “production” and “commercial production”. In this case all documents produced by the petitioner before the assessing authority as well as probabilities suggests that petitioner unit has not started commercial production from 31.3.1988 and in the light of the evidence available on record it is held that petitioners' contention is correct and it started commercial production of good from 14.9.1988 and, therefore, is entitled to tax exemption benefit up to 13.9.1993.

Consequently, both the revisions are allowed. The order of Tax Board dated 03.10.2001 and the order of Assessing Authority dated 18.9.1995 are set aside so far as the order by which the tax exemption has been denied to the petitioner upto 13.9.1983, the Assessing Authority shall pass fresh order.

(PRAKASH TATIA), J.

ns.